

ATTACHMENT A

BOARD RESOLUTION

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California Regional Water Quality Control Board North Coast Region

RESOLUTION NO. R1-2004-0011

Resolution Amending the *Water Quality Control Plan* for the North Coast Region to Incorporate Language Authorizing Schedules of Compliance in NPDES Permits

WHEREAS, In accordance with Section 13240 et seq. of the California Water Code (CWC), the California Regional Water Quality Control Board (Regional Water Board), North Coast Region, caused to be developed a *Water Quality Control Plan for the North Coast Water Quality Control Region*; and;

WHEREAS, The Regional Water Board, acting in accord with Section 13244 of the CWC, adopted Water Quality Control Plans (Basin Plans) for the Klamath River Basin (1A) and the North Coastal Basin (1B) on March 20, 1975. The Klamath River Basin Plan (1A) was combined with the North Coastal Basin Plan (1B) to form the *Water Quality Control Plan for the North Coast Region* (Basin Plan) on April 28, 1988; and;

WHEREAS, National Pollutant Discharge Elimination System (NPDES) permits are issued to dischargers of point source waste to surface waters pursuant to the federal Clean Water Act (CWA). The CWC (Sections 13370 et seq.) provides the authority to the Regional Water Board to issue NPDES permits in lieu of direct regulation of surface water waste discharges by the U.S. Environmental Protection Agency (U.S. EPA); and;

WHEREAS, Waste Discharge Requirements (non-NPDES permits) are issued to dischargers of non point source waste to surface waters pursuant to the CWC (Sections 13260 et seq.).

WHEREAS, In situations where receiving water limits in NPDES permits are not achieved because the discharger has not acted responsibly, an enforcement order to compel compliance with the effluent and/or receiving water limitations is appropriate. An enforcement order results from a finding of NPDES permit violation. Permit violations may expose the discharger to citizen suits pursuant to Section 505 of the CWA; and;

WHEREAS, In some circumstances, it may be infeasible for existing dischargers to comply immediately with effluent and/or receiving water limitations based on new, revised, or newly interpreted water quality objectives or prohibitions, adopted by the Regional Water Board or the State Water Board, or newly interpreted water quality criteria promulgated by the U.S. EPA. In these cases, it is reasonable and appropriate to include a schedule of compliance in the NPDES permit. Provided

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that the discharger acts in conformance with the permit-specified schedule, then the discharger would have time to come into compliance without a finding of permit violation; and;

WHEREAS, There have been circumstances in which the Regional Water Board deemed that immediate compliance with NPDES permit-specified effluent or receiving water limitations was not feasible. For these dischargers, the Regional Water Board's only course of action was to issue an enforcement order, since the Basin Plan does not explicitly authorize schedules of compliance in NPDES permits; and;

WHEREAS, A NPDES permit-specified schedule of compliance would provide the Regional Water Board with an additional regulatory tool that could be used when justified. This allows the Regional Water Board two ways of addressing the inability of an existing discharger, to achieve immediate compliance with a new, revised or newly interpreted water quality objectives, criteria, or prohibitions. Either by: 1) issuing an enforcement order or; 2) by incorporating a schedule of compliance in a NPDES permit. These are different regulatory tools; one an enforcement action, the other a legal condition of a permit; and;

WHEREAS, In some circumstances a discharger covered by a Non-NPDES permit, under new interpretation of law, may be newly required to comply with NPDES permitting standards. In these cases, the Regional Water Board will have the option to incorporate a schedule of compliance into the newly issued NPDES permit, if an enforcement order is not appropriate.

WHEREAS, Under authorization of schedules of compliance to implement TMDLs that implement new or recently revised or interpreted water quality objectives, criteria, or prohibitions and that are adopted as a single permitting action; compliance will be required in the shortest time feasible, but may extend beyond ten years from the date of permit issuance, reissuance or modification.

WHEREAS, An order by the U.S. EPA Administrator (*In the Matter of Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5)) interprets the scope of authority under 40 C.F.R. Section 131.13, to allow for schedule of compliance, and defines the constraints on the inclusion of schedule of compliance in NPDES permits. Schedules of compliance can be included in permits for those effluent limits that implement new (adopted after July 1, 1977), revised pre-1977 or newly interpreted water quality objectives, criteria or prohibitions, but only if explicit authorization for such schedules is included in the Basin Plan; and;

WHEREAS, The Basin Plan does not include explicit authorization for schedule of compliance in NPDES permits; and;

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WHEREAS, To assure water quality and beneficial use protection in a reasonable and fair manner, it is appropriate to amend the Basin Plan to incorporate language authorizing the inclusion of schedule of compliance in NPDES and Non-NPDES permits under certain circumstances; and;

WHEREAS, The Regional Water Board prepared and distributed written reports (staff reports) regarding adoption of the Basin Plan amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, Section 3775, Title 23, and 40 CFR Parts 25 and 131); and;

WHEREAS, The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report (EIR) or Negative Declaration. The Basin Plan amendment package includes staff reports, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. The Basin Plan amendment, Environmental Checklist, staff reports, and supporting documentation are functionally equivalent to an EIR or Negative Declaration; and;

WHEREAS, On February 10, 2004 the Regional Water Board held a public workshop and CEQA Scoping Meeting to initiate comments from the public, other agencies and Board.

WHEREAS, On March 24, 2004, the Regional Water Board held a Public Hearing to consider the Basin Plan amendment. Notice of the Public Hearing was given to all interested persons and published in accordance with CWC Section 13244; and;

WHEREAS, The Basin Plan amendment must be submitted for review and approval by the State Water Board, State's Office of Administrative Law (OAL) and the U.S. EPA. Once approved by the State Water Board, the amendment is submitted to OAL and U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board, after considering the entire record, including oral testimony at the hearing, pursuant to Sections 13240 and 13241 of the CWC, hereby adopts the amendment to the *Water Quality Control Plan for the North Coast Water Quality Control Region* (Region 1) as set forth in the attachment.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Water Board in accordance with the requirement of Section 13245 of the CWC.

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3. The Regional Water Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246 of the CWC and forward it to the OAL and the U.S. EPA for approval.
4. If during its approval process the State Water Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
5. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on _____.

Catherine E. Kuhlman
Executive Officer

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